

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREW J. MCGOWAN, JR.,

Plaintiff,

- against -

THE UNITED STATES LIFE INSURANCE COMPANY :
IN THE CITY OF NEW YORK, EDWARD E. HALL &
COMPANY AND BARON-SCARPA AGENCY, INC., :

Defendants.
----- x

: Civil Action No: 06 CV 7680

: **Motion to Dismiss for Failure**
: **to State a Cause of Action**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant The United States Life Insurance Company in the City of New York ("U.S. Life") moves to dismiss Plaintiff's Complaint, dated September 18, 2006.

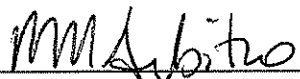
Plaintiff made claims against U.S. Life for breach of a life insurance contract and negligent misrepresentation for failing to pay life insurance benefits pursuant to a long term disability contract issued to him through his employer by Prudential.

Because ERISA provides the exclusive remedy for any claim related to an employee benefits plan and preempts any state law claim related to employee benefit plans, and Plaintiff's claim clearly relates to an employee benefits plan, his breach of contract claims and negligent misrepresentation claims are preempted and must be dismissed.

In support of this motion to dismiss, U.S. Life attaches a declaration and a memorandum of law.

Dated: White Plains, New York
October 10, 2006

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: 
Michelle M. Arbitrio (MA 2137)
3 Gannett Drive
White Plains, New York 10604-3407
Phone (914) 323-7000
Facsimile (914) 323-7001


CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2006, a copy of the foregoing Pre-Answer Motion to Dismiss was served on all parties relevant to the above matter by regular mail.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
ANDREW J. MCGOWAN, JR., :
 :
Plaintiff, : Civil Action No: 06 CV 7680
 :
- against - : **Declaration of Michelle M. Arbitrio**
 : **in Support of Motion to Dismiss**
 : **Pursuant to Federal Rule of Civil**
 : **Procedure 12(b)(6)**
THE UNITED STATES LIFE INSURANCE COMPANY :
IN THE CITY OF NEW YORK, EDWARD E. HALL &
COMPANY AND BARON-SCARPA AGENCY, INC., :
 :
Defendants. :
 :
----- x

Michelle M. Arbitrio, pursuant to 28 U.S.C. § 1746, declares and states as follows subject to the penalties for perjury of the United States of America:

1. I am an associate at the law firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP, attorneys for the United States Life Insurance Company in the City of New York ("U.S. Life") and submit this declaration in support of the U.S. Life's motion to dismiss for failure to state a cause of action pursuant to Federal Rule of Civil Procedure 12(b)(6).

2. Annexed to this declaration are true and correct copies of the following documents:

<u>Exhibit</u>	<u>Description</u>
A	Plaintiff's Complaint, dated September 18, 2006
B	U.S. Life letter to Andrew McGowan dated February 16, 2006
C	Telephone Logs dated October 6, 2006 and October 9, 2006

D Defense counsel's good faith letter to plaintiff's counsel faxed October 9, 2006

Dated: White Plains, New York
October 10, 2006

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: 
Michelle M. Arbitrio (MA 2137)

Index No. 06/CV-7680

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-against-

THE UNITED STATES LIFE INSURANCE COMPANY
IN THE CITY OF NEW YORK, EDWARD E. HALL &
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Defendants.

MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

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Dated: October 10, 2006
White Plains, New York